



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/341,635 | 07/14/99 | FERREIRA | R DEXNON/087/P |

JAMES E ALIX
ALIX YALE & RISTAS
750 MAIN STREET
HARTFORD CT 06103

IM22/1010

EXAMINER
TORRES VELAZQUEZ, N

ART UNIT PAPER NUMBER
1771

DATE MAILED: 10/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|--|---------------------------------------|------------------|
| Offic Action Summary | Application N . | Applicant(s) |
| | 09/341,635 | FERREIRA ET AL. |
| | Examiner Norca L. Torres-Velazquez | Art Unit 1771 |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | |
| Period for Reply | | |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. | | |
| <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). | | |
| Status | | |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>31 August 2001</u> . | | |
| 2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final. | | |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. | | |
| Disposition of Claims | | |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>1-17</u> is/are pending in the application. | | |
| 4a) Of the above claim(s) _____ is/are withdrawn from consideration. | | |
| 5) <input checked="" type="checkbox"/> Claim(s) <u>5 and 11-17</u> is/are allowed. | | |
| 6) <input checked="" type="checkbox"/> Claim(s) <u>1-4 and 6-10</u> is/are rejected. | | |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. | | |
| 8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement. | | |
| Application Papers | | |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner. | | |
| 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). | | |
| 11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. | | |
| 12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. | | |
| Priority under 35 U.S.C. §§ 119 and 120 | | |
| 13) <input checked="" type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). | | |
| a) <input checked="" type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input checked="" type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. | | |
| 14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received. | | |
| 15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. | | |
| Attachment(s) | | |
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | | |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | | |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | | |
| 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ | | |
| 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) | | |
| 6) <input type="checkbox"/> Other: _____ | | |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed August 31, 2001 have been fully considered but they are not persuasive.

It is the examiner's position that the fibrous mat of DOERER et al. (US 4,418,031) is identical to or only slightly different than the claimed nonwoven web prepared by a wet laid method as claimed, because both webs are made by continuous fibers from a group that includes jute, sisal, rayon, and acetate. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. Applicants argue that the DOERER et al reference teaches a material made by a dry process instead of a wet process. However, if the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The DOERER et al. reference either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the DOERER et al. reference.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1- 3, 6-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by DOERER et al. (US 4,418,031).

DOERER et al. discloses a moldable fibrous mat and teaches the use of wood, jute, sisal, rayon, acetate and cotton as suitable base fibers for the flexible mat. (Column 2, lines 49-50) The reference uses a mix that may consist of about 70% to 98% by weight of base fibers and about 2% to 30% by weight of thermoplastic carrier fibers to provide a continuous web 48 of mat material. (Column 4, lines 55-57).

4. Claims 1-4 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by BEARD et al. (EP 0908303A2).

BEARD et al. discloses vehicle interior decorative panel, such as a headliner, that utilizes a blend of fibers to define a batt sandwiched on opposite sides by mats. The mats are made of a fibrous material, which can be a natural fiber. (Column 1, lines 38-40). The reference teaches that the mats are made of a natural fiber such as jute, sisal or kenaf having a length of approximately 2 inches, which are blended with a thermoplastic fiber, such as polypropylene, polyester or polyethylene. The ratio of natural fibers to the thermoplastic fibers is from about 85 to 80 percent natural fibers to thermoplastic fibers. (Column 2, lines 56-58 to Column 3, lines 1-5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DOERER et al. as applied to claims 1- 3, 6-7 and10 above.

It is noted that DOERER et al. is silent with respect to the claimed basis weight and elasticity. It would be obvious to optimize the basis weight and elasticity depending on how much strength is wanted in the material.

Allowable Subject Matter

7. Claims 5 and 11-17 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to teach a nonwoven web as claimed in this application that includes a pulp fiber component, or further a multilayer sheet material comprising the nonwoven web and a pulp web secured to it.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 7:30-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

Art Unit: 1771

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

nlt *[initials]*
October 4, 2001



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700